

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
Pacific Water Conditioning )  
Association, Inc. for Review of )  
Order No. 75-105 (NPDES Permit )  
No. CA0105759) and Order No. )  
75-177 (NPDES Permit No. )  
CA0105848) California Regional )  
Water Quality Control Board, )  
Santa Ana Region. Our Files Nos. )  
A-122 and A-127. )

Order No. WQ 77-16

BY THE BOARD:

On September 12, 1975, the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) adopted Order No. 75-105 (NPDES Permit No. CA0105759), prescribing waste discharge requirements for the City of Redlands. Pursuant to Water Code Section 13320, the Pacific Water Conditioning Association, Inc. (petitioner) filed with the State Water Resources Control Board (State Board) a petition dated October 10, 1975 which was received by the State Board on October 14, 1975. This petition sought review of Order No. 75-105 and requested a hearing. The State Board acknowledged receipt of this petition by a letter dated October 21, 1975.

On November 4, 1975, the Regional Board adopted Order No. 75-177 (NPDES Permit No. CA0105848) prescribing waste discharge requirements for the City of Corona. Pursuant to Water Code Section 13320, the petitioner filed with the State Board a petition dated December 11, 1975 which was received by the State Board on December 15, 1975. The State Board acknowledged receipt of this petition by letter dated February 4, 1976.

The State Board by a notice dated October 21, 1976 scheduled a public hearing on both said petitions for November 22, 1976. Subsequently, the petitioner objected to the scope of the hearing so noticed and also requested additional time to prepare for the hearing. Consequently, the State Board rescheduled the hearing for January 18, 1977 and also requested a meeting with the petitioner to resolve the dispute concerning the appropriate scope of the hearing. At this meeting, the petitioner and the State Board staff agreed that the most expeditious consideration of their petition could be accomplished by first resolving, in a water quality order, some legal questions concerning the Porter-Cologne Water Quality Control Act of 1969 (Water Code Section 13000 et seq.) and, depending upon subject order, then holding a public hearing if necessary. The petitioner agreed to submit a Memorandum of Points and Authorities on the legal issues by January 20, 1977. This understanding was confirmed in writing by the State Board in a letter dated December 20, 1976.

By a letter dated January 19, 1977, the petitioner filed with the State Board said Memorandum of Points and Authorities, which was received by the State Board on January 27, 1977. The present order responds to the legal issues in said memorandum.

#### I. Background

The petitioner is a trade association of retail dealers, manufacturers and suppliers in the "point of use" water conditioning industry in the seven Western United States, and has members whose

water conditioning businesses are located in or serve the City of Redlands and the City of Corona.

The Santa Ana River Basin has a severe water quality problem from an adverse salt balance, that is, more salts enter the Basin than leave the Basin. The net result is a long-term general degradation of water quality in both surface and groundwater supplies. In 1970 the rate of buildup for dissolved salts was estimated to be 523,000 tons/year in the entire basin, with Colorado River constituents accounting for over 30 percent of the total, and domestic and agricultural sources accounting for one half of the total salt input.<sup>1</sup>

As a consequence of this known water quality problem, the Regional Board in 1975 established in the Water Quality Control Plan, Santa Ana Basin, a "Mineral Source Control Program", which was expressed in terms of guidelines and Basin average limits to be applied. This program was not a mandatory requirement for every waste discharger. The petitioner's complaint arises from the application of these guidelines to the subject waste discharges.

## II. Contentions and Findings

Although in its initial petition the petitioner raised a number of factual and legal issues related to the terms of Orders No. 75-105 and No. 75-177, as herein above explained,

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1. This information comes from Chapter 14 of the Water Quality Control Plan Report, Santa Ana Basin, see page 14-7 to 14-16.

this water quality order will only address those legal issues briefed by petitioner in its letter dated January 19, 1977.

1. Contention:

The petitioner contends that the Regional Board in issuing the subject waste discharge requirements and the State Board in reviewing such actions must make legally sufficient findings to support its action, that, as analyzed subsequently, the findings by the Regional Board are inadequate, and that, in the absence of legally sufficient Regional Board findings, the State Board must remand both of these proceedings to the Regional Board so that the Regional Board can make the necessary findings.

Findings: While we agree with the petitioner that an administrative agency such as the Regional Board is required to make "legally sufficient findings" in support of its actions, we do not agree with the petitioner's contention that the Regional Board did not make adequate findings in this case.

Petitioner, in support of his assertion, that the Regional Board must make "legally sufficient findings" cites the leading case "Topanga Assn. for a Scenic Community v. County of Los Angeles, 11 Cal.3d 506, 113 Cal.Rptr. 836. This case reviews generally the policy reasons behind a requirement for administrative agencies to make findings. The Court stated:

"Our ruling in this regard finds support in persuasive policy considerations. According to Professor Kenneth Culp Davis, the requirement that administrative agencies set forth findings to support their adjudicatory decisions stems primarily from judge-made law and is 'remarkably uniform in both federal and state courts'. As stated by the United States Supreme Court, the 'accepted ideal . . . is that 'the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.'"

"Among other functions, a findings requirement serves to conduce the administrative body to draw legally relevant subconclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions."

In addition, findings enable the reviewing court to trace and examine the agency's mode of analysis. Absent such roadsigns, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency. Moreover, properly constituted findings enable the parties to the agency proceeding to determine whether and on what basis they should seek review. They also serve a public relations function by helping to persuade the parties that administrative decision-making is careful, reasoned, and equitable." Topanga Assn. for a Scenic Community v. County of Los Angeles, supra at 515-518 (Citations and Footnotes omitted.)

Other courts have applied these policy statements in a variety of circumstances. Basically, they have distinguished between legislative actions and quasi-judicial or adjudicatory actions. The former do not require findings in accordance with the policy statements in Topanga; the latter do. See City of R. P. Verdes v. City Council of R. Hills, etc., 59 Cal.App. 3d 869, 129 Cal. Rptr. 173 (1976); Merced County Board of Supervisors v. California Highway Com'n 57 Cal.App. 3d 952, 129 Cal.Rptr. 504, (1976); Myers v. Board of Supervisors of Cty. of Santa Clara, 58 Cal.App. 3d 413, 129 Cal.Rptr. 902, (1976).

In the present situation the Regional Board took an adjudicatory action in prescribing waste discharge requirements and, as a consequence, for the policy reasons described above, it was required to make "legally sufficient findings".

The relevant findings made by the Regional Board in its Order No. 75-105 (City of Redlands) are as follows:

- "2. City of Redlands proposes to discharge up to an average of 6.0 million gallons per day to Santa Ana River (Reach 4), a water of the United States, at a point 001, latitude  $34^{\circ}5'30''N$ , longitude  $117^{\circ}12'56''W$ .
3. City of Redlands proposes, as an alternative, to discharge up to an average of 6.0 million gallons per day to percolation ponds at a point 002, latitude  $34^{\circ}5'27''N$ , longitude  $117^{\circ}12'25''W$ . The vicinity of this discharge is underlain by the Bunker Hill II Groundwater Basin.
4. The Board adopted a Water Quality Control Plan on April 11, 1975. The Plan contains beneficial uses and water quality objectives for the Santa Ana River and the Bunker Hill II Groundwater Basin.
5. The beneficial uses of the Santa Ana River (Reach 4) include:
  - a. Groundwater recharge;
  - b. Non-contact recreation;
  - c. Wildlife habitat.
6. The beneficial uses of the Bunker Hill II Groundwater Basin include:
  - a. Agricultural supply;
  - b. Municipal and domestic supply;
  - c. Industrial service supply;
  - d. Industrial process supply.

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8. The Board has notified the discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the proposed discharge and has provided them with an opportunity for a public hearing and an opportunity to submit their written views and recommendations.
9. The Board in a public meeting heard and considered all comments pertaining to the discharge."

The relevant findings made by the Regional Board in its Order No. 75-177 (City of Corona) are as follows:

- "2. The discharger proposes, on an emergency basis, to discharge up to an average of 5.5 million gallons per day to Temescal Creek, a water of the United States, at:
  - a. Latitude 33°53'41"N, Longitude 117°36'36"W (Discharge Serial Number 001);
  - b. Latitude 33°54'02"N, Longitude 117°35'41"W (Discharge Serial Number 003); or
3. The City of Corona will discharge up to an average of 5.5 mgd to percolation ponds in the Temescal Groundwater Basin at:
  - a. Latitude 33°53'44"N, Longitude 117°35'34"W (Discharge Serial Number 002);
  - b. Latitude 33°53'42"N, Longitude 117°36'22"W (Discharge Serial Number 004);
  - c. Latitude 33°53'56"N, Longitude 117°35'36"W (Discharge Serial Number 005);
  - d. Latitude 33°54'02"N, Longitude 117°35'46"W (Discharge Serial Number 006).
4. Resolution No. 55-12(12-70) and Cease and Desist Order No. 70-14 are the current requirements for the City of Corona.

5. The Board adopted a Water Quality Control Plan on April 11, 1975. The Plan contains beneficial uses and water quality objectives for both Temescal Creek and the Temescal Groundwater Basin.
  6. Resolution No. 55-12(12-70) is neither current nor adequate and does not conform with the Basin Plan. Cease and Desist Order No. 70-14 was adopted prior to the amendments to Resolution No. 55-12 in December 1970. These amendments are inconsistent with the cease and desist order and technically made the cease and desist order null and void.
  7. The beneficial uses of Temescal Creek include:
    - a. Agricultural supply;
    - b. Groundwater recharge;
    - c. Non-contact recreation;
    - d. Wildlife habitat;
    - e. Warm freshwater habitat.
  8. Temescal Creek is tributary to the Santa Ana River (Reach 3). The beneficial uses of the Santa Ana River (Reach 3) include:
    - a. Groundwater recharge;
    - b. Water contact recreation;
    - c. Warm freshwater habitat;
    - d. Wildlife habitat;
  9. The beneficial uses of the Temescal Groundwater Basin include:
    - a. Agricultural supply;
    - b. Municipal and domestic supply;
    - c. Industrial service supply;
    - d. Industrial process supply.
- \* \* \*
11. The Board has notified the discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the proposed discharge and has provided them with an opportunity for a public hearing and an opportunity to submit their written views and recommendations.
  12. The Board, in a public meeting, heard and considered all comments pertaining to the discharge."

Each of the Regional Board orders then goes on to state that the discharges

"in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder and the provisions of the Federal Water Pollution Control Act, and regulations and guidelines adopted thereunder shall comply with the following:".

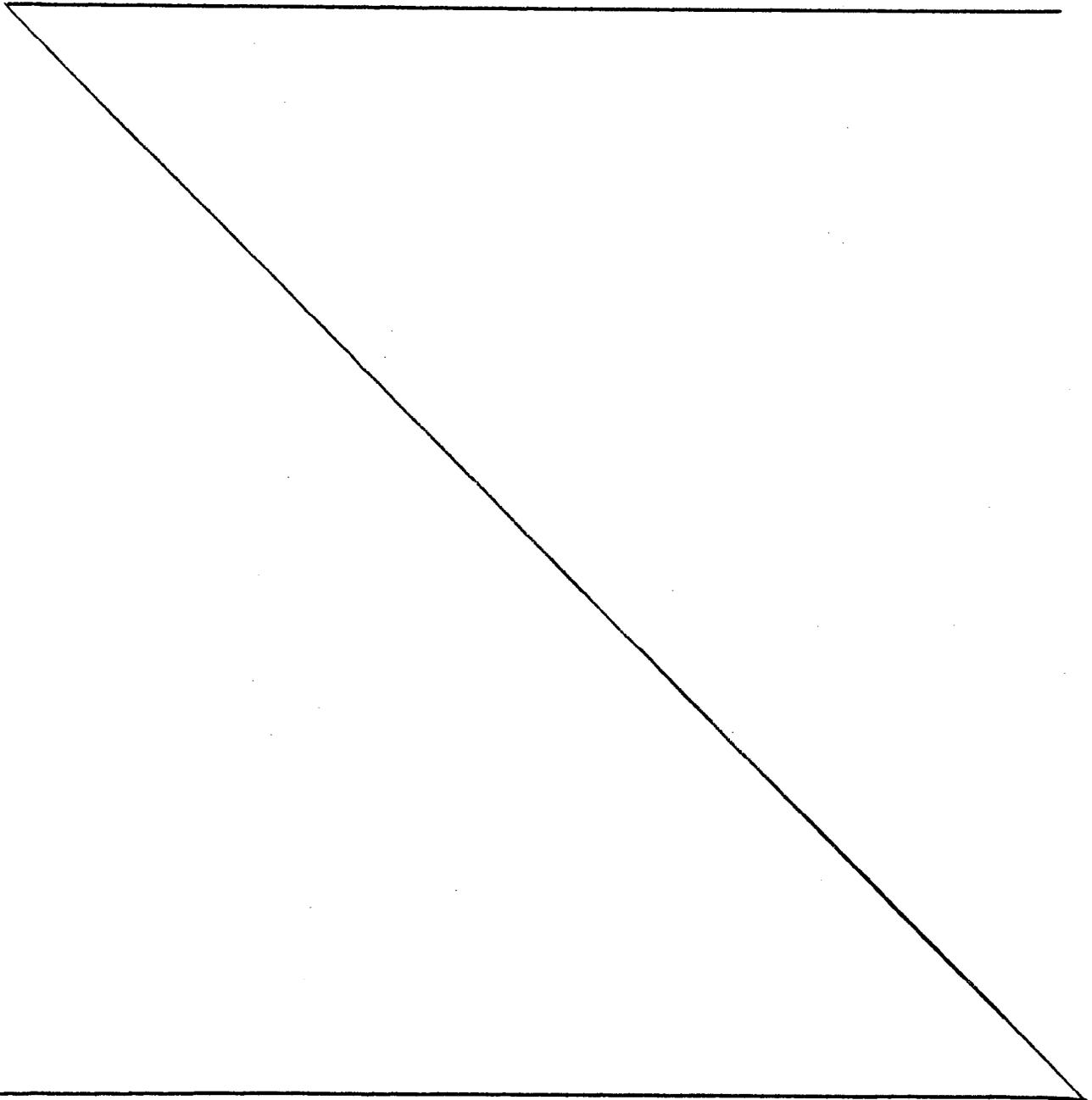
Specific discharge requirements are thereafter specified for each of the dischargers.

The Regional Board's findings, as set forth above, indicate that the requirements were adopted to implement the Water Quality Control Plan for the Santa Ana Basin (Basin Plan) and that the comments of the petitioner were considered in adopting the requirements. Whether the requirements in fact implement the Basin Plan is a factual issue, the resolution of which is not before the State Board in connection with this order which resolves only legal issues.

In resolving the issue of the adequacy of the Regional Board's findings, it is important to point out that the Topanga case involved a situation in which the Los Angeles County Regional Planning Commission departed from a County one-acre minimum lot Zoning Ordinance by granting a variance permitting construction of a 93-space mobile home park.

The Topanga situation differs from the situation faced by the Regional Board in adopting Orders 75-105 and 75-177 in that the Regional Board was implementing its plan as written rather than departing from it.

Regional Boards frequently receive numerous detailed comments in response to their notices of proposed NPDES permits.



To require detailed findings regarding every issue raised during the process of adoption of permits which implement the Basin Plan would be extremely burdensome and unproductive, and, we believe, is not required by law.

2. Contention:

The petitioner contends that the Regional Board totally ignored its responsibilities under the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et seq., herein referred to as "CEQA") in prescribing both of the permits under consideration. The petitioner contends that the Regional Board failed to prepare an environmental impact report as required by CEQA or in the alternative that the Regional Board failed to even consider the policy provisions of CEQA.

Findings: Water Code Section 13389 addresses the relationship between the adoption by the Regional Board of waste discharge requirements for the discharge of pollutants to navigable waters of the United States and the CEQA; it states:

"Neither the state board nor the regional boards shall be required to comply with the provisions of Chapter 3 (commencing with Section 21000) of Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control or acts amendatory thereof or supplementary thereto."

The petitioner recognizes the applicability of Water Code Section 13389, but argues that it only allows the Regional Board to postpone the preparation of an environmental impact report until after the adoption of waste discharge requirements, but does not excuse compliance forever. Petitioner argues that this interpretation is supported by the statutory framework of the Porter-Cologne Water Quality Control Act because the time constraint of 120 days within which to adopt requirements (See Water Code Section 13264) is too short for a Regional Board to prepare an EIR and that the legislature removed such time pressure through the adoption of Section 13389.

Petitioner's argument fails to recognize the legislative history behind the enactment of Chapter 5.5, Division 7 of the Water Code which contains Water Code Section 13389. In 1972 the Congress passed the Federal Water Pollution Control Act Amendments of 1972 (P. L. 92-500, hereinafter the "Federal Act") which, among other things, created a national permit system for the discharge of pollutants to navigable waters of the United States called the National Pollutant Discharge Elimination System (NPDES) permit program. Initially, the U.S. Environmental Protection Agency (EPA) was authorized to administer the NPDES permit program, but the Federal Act contemplated that this national program could be administered by the states under a state permit program, meeting certain minimum requirements. The California Legislature in 1972

added Chapter 5.5, Division 7, of the Water Code to allow the State of California to assume the administration of this new national permit program.

Section 511 of the Federal Act addresses the analogous environmental analysis responsibility of the EPA under the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.; hereinafter referred to as "NEPA"). It states in pertinent part:

"(c)(1) Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 201 of this Act, and the issuance of a permit under section 402 of this Act for the discharge of any pollutant by a new source as defined in section 306 of this Act, no action of the Administrator taken pursuant to this Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852)."

As Section 511(c)(1) indicates the EPA received a complete exemption from the NEPA except for the following actions:

1. the provision of Federal financial assistance under Section 201 and
2. the issuance of a permit under Section 402 for the discharge of any pollutant from a new source.<sup>1</sup>

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2. Section 402 of the Federal Act is the provision of the Federal Act authorizing the NPDES permit program.

The basis for this exemption is explained in the Legislative History as follows:

"Section 511(c) clarifies certain relationships between the Federal Water Pollution Control Act (FWPCA) and the National Environmental Policy Act (NEPA)."

"The Federal Water Pollution Control Act Amendments of 1972 charge the Administrator of EPA with a comprehensive mandate to regulate the discharge of pollutants into the waters of the United States. The sole purpose of the Act is the enhancement of environmental quality. In the administration of the Act, EPA will be required to establish numerous guidelines, standards and limitations. With respect to each of these actions, the Act provides Congressional guidance to the Administrator in as much detail as could be contrived. Virtually every action required of the Administrator by the Act, however, involves some degree of agency discretion, judgments involving a complex balancing of factors that include technological considerations, economic considerations, and others. The Act seeks to guide the Administrator, to the extent possible, in the matter of assigning relative weight to the many factors that he must consider."

"If the actions of the Administrator under this Act were subject to the requirements of NEPA, administration of the Act would be greatly impeded." (Emphasis added)

[From the Joint Explanatory Statement of the Committee of Conference as set forth in "A Legislative History of the Water Pollution Control Act Amendments of 1972", prepared by the Environmental Policy Division of the Congressional Research Service of the Library of Congress, Volume 1 at 332 (1973); also set forth in U. S. Code Congressional and Administrative News, 92nd Congress, 2nd session at 3826-3827, (1972)].

As previously indicated, Water Code Section 13389 provides the State Board and each Regional Board with a similar exemption from the analogous requirement to prepare an environmental impact report under CEQA. If the petitioner's contention were sustained, the administration of the NPDES permit program in California would be greatly impeded.

Petitioner argues that our regulations establish that Water Code Section 13389 does not provide a complete exemption from the requirement to prepare an EIR under the CEQA for the adoption of waste discharge requirements for discharges of pollutants to navigable waters of the United States. Section 2714(d)(1), Article 4, Subchapter 17, Chapter 3, Title 23, California Administrative Code categorically exempts the "adoption of waste discharge requirements pursuant to Article 4, Chapter 9, Division 7 of the Water Code". As a result, petitioner argues that by implication the State Board has concluded that not all waste discharge requirements for discharge of pollutants to navigable waters of the United States are exempt under Water Code Section 13389 from the requirement to prepare an EIR. In addition, petitioner argues that such a categorical exemption is invalid because of the recent decision of the California Supreme Court in Wildlife Alive v. Chickering, 17 C. 3d 768, as modified 18 C. 3d 190.

Petitioner's argument fails to recognize the authority under which the subject requirements were adopted. They were not adopted, as alleged by petitioner, under Article 4, Chapter 4,

Division 7 of the Water Code. Rather they were adopted under Chapter 5.5, Division 7 of the Water Code and our administrative regulations for implementation of CEQA address this distinction. Section 2716, Article 4, Subchapter 17, Chapter 3, California Administrative Code states:

"Environmental documents are not required for adoption of waste discharge requirements under Chapter 5.5, Division 7, of the Water Code, except requirements for new sources as defined in the Federal Water Pollution Control Act. This exemption is in accordance with Water Code Section 13389 which does not apply to the policy provisions of Chapter 1 of CEQA."

Consequently, the validity or applicability of Section 2714 of Title 23 of our regulations is not in issue here.

The petitioner, in the alternative, argues that the Regional Board is subject to the policy sections of the CEQA even if the Board is exempt from the requirement to prepare an EIR and that it failed to consider the potential environmental consequences in the adoption of the subject requirements.

We have held in previous orders that where an EIR has been prepared or is known by the Regional Board to be in preparation and the proposed project is expected to have substantial environmental impacts, the Regional Board should consider the EIR in spite of the Water Code Section 13389 exemption. [See Orders 75-4 (Diamond A Ranch), 75-8 (Kirtlan) and 76-5 (City of

Arcata).]<sup>2/</sup> We have never had occasion previously to consider what is adequate compliance with the policy provisions of CEQA when no EIR has been prepared for a particular project. There are a number of different approaches which could be taken toward compliance with CEQA policy provisions under these circumstances. We could, for example, require the Regional Boards to conduct their own environmental analyses on each proposed permit to determine whether there are likely to be significant non-water quality environmental impacts from a proposed project. However, since such an approach, as discussed above, would virtually defeat the purpose of the EIR exemption granted by Section 13389 this alternative is not available to us.

A second alternative would be to require preparation of EIRs on Basin Plans. This would provide a sound mechanism for full-blown consideration of the potential impacts of subsequent Plan implementation through adoption of waste discharge requirements. At the time of adoption of requirements under this alternative the Regional Board would be required to consider only those potential impacts which are expected to be substantially different from the impacts foreseen in the basin-wide EIR. We anticipate an Initial Study and Negative Declaration or Initial Study and Basin Plan EIR for each future revision of a Basin Plan; however, since no Basin Plan EIR exists for the

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3. Recent amendments to CEQA (See Public Resources Code Sections 21002.1 and 21081) also require consideration of an EIR where one has been prepared.

current Santa Ana Basin Plan<sup>4</sup> this is not a feasible approach to this particular petition.

It appears that the only viable approach where no Basin Plan EIR has been prepared is to have the Regional Board seek comments on proposed permits. Where comments received reflect reasonable concerns over substantial non-water quality adverse environmental impacts, the Regional Board should then make findings regarding actions which were taken to respond to the concerns or reasons why it is not feasible to mitigate or avoid the substantial adverse environmental consequences of the proposed discharge.

The record in this case indicates that the Regional Board made a substantial effort to obtain comments regarding the proposed project from interested persons. A fact sheet explaining the rationale behind each of the permits as well as a copy of the draft permit was mailed well in advance of the Board meeting to

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4. Section 2714(d)(2) of the State Board's regulations categorically exempts Basin Planning from the provisions of CEQA in conformity with Section 15108 of the Resources Agency Guidelines for implementation of CEQA, Chapter 3, Title 14, California Administrative Code. This exemption was validly in effect in 1975 at the time of the adoption of the permits in question here. The California Supreme Court decision in Wildlife Alive v. Chickering, 17 C. 3d 768, as modified 18 C. 3d 190; 132 Cal. Rptr. 377; 553 P.2d 537 (August 24, 1976) places the validity of Section 15108 as it applies to some activities of regulatory agencies in question. We do not discuss here whether our basin planning efforts continue to be categorically exempt, however, we do, as discussed in the text of this order, plan to prepare either an Initial Study and Negative Declarations or an Initial Study and EIRs on our upcoming plan revisions."

all persons known to have an interest in the permits and a number of written comments were received regarding each of the permits. A hearing regarding each of the permits was held by the Regional Board. The non-water quality environmental impacts of the Basin Plan also have been addressed by the Regional Board in Chapter 6 of the Plan. Comments were invited on the Basin Plan at the time of its adoption and the petitioner, in fact, did comment on the Plan.

Clearly, the Regional Board gave ample opportunity for comment regarding non-water quality environmental impacts with respect to the two orders in question here. However, the orders adopted by the Regional Board do not discuss any non-water quality environmental impacts raised by any of those who commented on the proposed permits. No transcript of the Regional Board hearings on the two permits in question is available, therefore, it is not known whether non-water quality environmental impacts were raised at the Regional Board hearings. The written comments submitted to the Regional Board, including those of the petitioner, appear to deal almost exclusively with water quality (e.g., the potential for increased use of detergent if water cannot be softened) and economic (e.g., the cost to water users of substituting portable exchange water softeners for self-regenerative softeners) issues.

However, the State Board plans to hold a hearing to take evidence regarding the unresolved issue discussed under contention 1, above, that is, whether the permits in question in fact implement the Basin Plan. As a part of that hearing, oral argument and evidence will also be taken regarding whether any of the issues raised by the petitioner before the Regional Board at the time of the adoption of the permits in question raises non-water quality environmental concerns and, if so, what action should be taken in response to those concerns. The petitioner will not be permitted to raise new general environmental concerns at this time.

3. Contention:

The petitioner contends that the Regional Board failed to consider all that is required of it under the Porter-Cologne Act when issuing both of the waste discharge requirements herein. Specifically, the petitioner contends that Water Code Section 13263 incorporates the provisions of Water Code Section 13241 and that the Regional Board failed to specifically consider each of the factors included in Water Code Section 13241.

Findings:

Water Code Section 13263 states in pertinent part:

"The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or

material change therein, except discharges into a community sewer system, with relation to the conditions existing from time to time in the disposal area or receiving waters upon or into which the discharge is made or proposed. The requirements shall implement relevant water quality control plans, if any have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.

Water Code Section 13241, which is referred to in Water Code Section 13263, states:

"Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available hereto.
- (c) Water Quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.

Petitioner argues that his contentions are supported by the language in Water Code Section 13241 which is temporal in nature, e.g., "past, present, future", "water available", "reasonably achieve through the coordinated control of all factors", "economic considerations" (emphasis added). The petitioner argues that since this language is temporal in nature, and since a water quality control plan is not cast in concrete, specific review of each of the considerations in Water Code Section 13241 must be undertaken by a Regional Board at the time of adoption of requirements because they assist a Regional Board in testing the validity of the assumptions and judgements contained in the Water Quality Control Plan. The petitioner further argues that such testing of a water quality control plan is necessary because the plan only constitutes generalized statements of objectives based on hypothesis that are far from fully tested, averages, estimates and computerized projections.

Petitioner's interpretation of the Porter-Cologne Act is incorrect. Before addressing the specific contentions and arguments of the petitioner, a brief review of the relationship between a water quality control plan and waste discharge requirements is appropriate.

Under Article 3 of the Porter-Cologne Act (Water Code Section 13240-13242) the Regional Board is required to formulate and adopt water quality control plans (basin plans) for the surface and underground waters of the region. In addition to the required contents of a water quality control plan indicated in Water Code Section 13241, Water Code Section 13242 mandates that each plan shall contain a program of implementation to achieve water quality objectives which includes at least:

- "(a) A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private."
- "(b) A time schedule for the actions to be taken."
- "(c) A description of surveillance to be undertaken to determine compliance with objectives."

Under the Porter-Cologne Act the primary purpose of the basin plan is to maintain and restore water quality for all appropriate beneficial uses in the light of existing and projected land use patterns. This primary purpose is achieved by identifying what water quality is necessary to protect beneficial uses (i.e., establishing water quality objectives) and by formulating possible solutions to any present problems (i.e., describing "the nature of actions" necessary to achieve objectives and protect beneficial uses).

As part of description of the nature of actions necessary to achieve objectives and protect beneficial uses, the Regional Board included a waste load allocation for the Santa Ana River Basin. Basically, a waste load allocation analyzes what control mechanisms are necessary to achieve a set of water quality objectives. The Regional Board prepared the allocation by surveying the existing and projected wastewater discharges in the region and by means of a computer model calculating the resulting water quality. Since the model predicted that the continuation of existing practices would mean that water quality objectives would not be achieved, various control mechanisms were then assumed and analyzed by the computer model. By this means the Regional Board considered the effects of all waste discharges and developed appropriate control mechanisms. (See Chapter 5 of the Water Quality Control Plan, Santa Ana Basin.)

Under the present statutory scheme, the Regional Board primarily protects water quality by the adoption and enforcement of waste discharge requirements, which regulate the discharge of waste into the surface and underground waters of the State. Since Water Code Section 13263 requires a Regional Board to implement any relevant basin plan, the Regional Board must, at a minimum, incorporate into the waste discharge requirements applicable beneficial uses and relevant water quality objectives together with such other requirements as a Regional Board may deem necessary to protect water quality. By determining beneficial

uses and water quality objectives for a particular body of water and by conducting a waste load allocation, a Regional Board is able to treat similar situations in an equivalent manner and a more even-handed application of the Porter-Cologne Act results.

The petitioner's interpretation of Water Code Section 13263 and 13241 would frustrate the implementation of this statutory scheme by having the Regional Board reconsider in detail each time it adopted a waste discharge requirement the past, present and probable future beneficial uses of the receiving water, the environmental characteristics of the hydrographic unit under consideration, water quality conditions that could reasonably be achieved through coordinated control of all factors which affect water quality in the area, etc.,. The magnitude of such task and the piecemeal approach suggested would prevent the administration of an effective and equitable permit program. Further, such an approach is inconsistent with the intent of the drafters of the Porter-Cologne Water Quality Control Act. The Final Report of the Study Panel to the California State Water Resources Control Board, dated March, 1969, contains the following statement with regard to the relationship between basin plans and waste discharge requirements" "If plans have not yet been adopted, the waste discharge requirements would be established on the same basis as water quality control plans..." (Page 15 of the Final Report, emphasis supplied). This statement indicates that the intent of the reference to Section 13241 in Section 13263 is meant to require consideration of the factors listed in Section 13241

at the time of adoption of individual permits only when no Basin Plan has been adopted. We have affirmed this position in a number of previous State Board Orders [See e.g., Orders Nos. 73-4 (Rancho Caballero), 74-2 (Santee County Water District) and 77-10 (Pacific Gas and Electric)].

Recently in the case of Hampson v. Superior Court, 67 Cal.App. 3d 472, 136 Cal.Rptr. 722, (1977) the Fourth District Court of Appeals rejected petitioner's contention. It stated:

"Section 13263 makes it quite clear that the regional boards are authorized to proceed to establish discharge requirements even though a regional water quality plan has been adopted. When a plan has been adopted the discharge requirements are to implement the plan. In the absence of a plan, section 13263 lists the factors to be considered. Hampson v. Superior Court, supra, at 481. (Emphasis added.)

Accordingly, a Regional Board is not required to reconsider each of the elements specified in Section 13241 when prescribing waste discharge requirements implementing a basin plan.

However, our conclusion does not mean that the Regional Board should remain idle, if during the adoption of waste discharge requirements a significant problem

is identified with the assumptions or judgments contained in a basin plan. In such event the appropriate action by the Regional Board is to schedule hearings on an amendment to said plan.

While we outline this procedure for the benefit of petitioner, our discussion does not constitute any indication on our part that the Regional Board should amend the existing basin plan or even that it should schedule hearings on an amendment-- other than hearings it will hold as part of its continuous planning process.

### III. Conclusions

After review of the record, and consideration of the contentions of the petitioner and for the reasons discussed, we conclude as follows with regard to the legal issues raised by the petitioner.

- (1) As set forth in the findings regarding Contention 1, there is no obligation on the part of the Regional Board to make detailed findings regarding water quality matters where a permit implements the relevant Basin Plan, and the action of the Regional Board in this regard was appropriate and proper. However, the State Board will hold a hearing to determine whether the permits adopted by the Regional Board do, in fact, implement the Basin Plan.

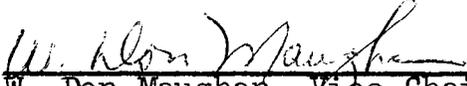
- (2) As set forth in the findings regarding Contention 2, where persons commenting on a proposed permit raise reasonable concerns regarding potential substantial non-water quality adverse environmental impacts of a proposed project for which no EIR has been prepared by any other agency and for which the Regional Board's approval is exempt from Chapter 3 of CEQA pursuant to Water Code Section 13389, the Regional Board should adopt findings setting forth how those concerns were dealt with by the Board in conformity with the findings responding to Contention 2, above. A decision concerning the appropriateness of the Regional Board's actions in this regard will be deferred pending further hearing by the State Board.
- (3) As set forth in the findings regarding Contention 3, there is no obligation on the part of the Regional Board to reconsider the matters referred to in Water Code Section 13241 at the time of adoption of requirements where a Basin Plan is in effect and the requirements implement that plan. The action of the Regional Board in this regard was appropriate and proper.

We further conclude that a hearing should be held by the State Board to consider legal arguments and factual issues in conformity with the findings of this Order.

IT IS, THEREFORE, ORDERED that the petition for review of Order No. 75-105 and 75-177 is denied insofar as it concerns the Regional Board's obligation to make detailed findings regarding water quality matters where a permit implements the relevant Basin Plan and insofar as it concerns the Regional Board's obligation to reexamine the matters referred to in Water Code 13241 at the time of adoption of a permit, and that a hearing be scheduled to consider factual issues and legal arguments in conformity with the Findings and Contentions contained in this Order.

Dated: JUL 21 1977

  
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John E. Bryson, Chairman

  
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W. Don Maughan, Vice Chairman

  
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W. W. Adams, Member